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SUBJECT: Thai Government and Courts Side with Environmentalists Over
Business Interests in Pollution Case

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11. (SBU) Summary: In a surprise verdict with potentially wide-ranging implications, an Administrative Court in the industrialized province of Rayong ruled March 3 that the Map Ta Phut Industrial Estate and its environs should be declared a pollution control area, requiring enforcement of yet-to-be determined but strict environmental standards. The unprecedented ruling was in favor of a law suit brought by local communities against Thailand's National Environmental Board (NEB) for negligence. The NEB, chaired by Thailand's Prime Minister, decided March 16 not to appeal the decision, much to the chagrin of businesses concerned about the investment climate (and their investments in particular), and the praise of environmental activists who claim pollution is causing severe health problems to local community residents. The Court ruling, and RTG decision not to challenge it, reflects an emboldened judiciary more willing to offer opportunities for citizen redress. End Summary.

12. (SBU) Comment: The Map Ta Phut case presents a multi-faceted issue, pitting many powerful interests against each other. On the one hand, it is a success story for environmental/community activism that, at least indirectly, the USG has supported to help deepen civil society's role in Thailand. On the other hand, U.S. business interests have cause for concern for multi-billion dollar investments, despite having played a constructive role in developing voluntary environmental standards that surpass those contemplated by the government. We will continue to advocate the interests of Dow Chemical to help ensure its environmental impact assessments are processed in a timely fashion, despite the turmoil. At the same time, we will make it clear that we respect the Court's ruling and what it signifies for the environmental and civil society causes we also support. End Comment.

Case Background

13. (SBU) Under Thailand's 1992 National Environmental Quality Act, the National Environment Board or NEB (chaired by the Prime Minister with the Ministers of Natural Resources and Environment, Defense, Industry, Public Health, and Interior as members) may declare an area a pollution control area if it appears that any locality is affected by pollution problems that may cause health hazards to the public or otherwise have an adverse impact on environmental quality. Since the law came into force, the NEB has declared 16 areas pollution controlled, five of which are industrial estates. In 2005, the NEB began review of the Map Ta Phut district, in Rayong Province, as a pollution controlled area upon the request of the then Minister of Natural Resource and Environment (MNRE). The Board declined the proposal and, instead, ordered the MNRE's Department of Pollution Control (PCD) and Thailand's Industrial Estate Authority

(IEA) to develop voluntary pollution control plans with private businesses active in the area.

14. (SBU) Under this initiative, businesses in the area promised to spend more than 10 billion baht on toxic-emission controls. Thailand's PTT Group and Siam Cement Group alone promised a combined 7 billion baht investment in environmental projects. Nonetheless, community members, believing the NEB's decision allowed for the degradation of the environment and health of the people in the area, sued the Board for negligence in October 2007. In its March 3 decision, the Rayong Administration Court ruled the NEB must formally declare Map Ta Phut a pollution control area within sixty days, and spelled out which administrative sub-districts were covered in the ruling. The NEB determined March 16 not to appeal the decision, with the press reporting Prime Minister Abhisit Vejjajiva as stating it will help the RTG to eradicate the problem that the local community has faced for a long time. According to PCD's legal office, the Rayong Provincial Governor now has the authority to develop the environmental rules for the pollution control area, which will be done with input from local officials and community leaders.

Environmental/Community Activism

15. (SBU) According to media reports, the Court was convinced by several official reports, including a MNRE study citing excessive toxic leaks and waste produced by factories in the Map Ta Phut estate and detected in surrounding areas. The press referenced other studies considered by the Court, such as a Thailand National Cancer Institute report on the incidence of cancer and leukemia among local residents (five times higher than the national rate), as well as others on genetic defects among community residents and levels of heavy metals beyond safety standards. A community activist involved in the case explained to Emboff March 12 the rationale behind the law suit against the NEB. Local residents had

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not been pleased with what they considered a non-transparent process arranged by the NEB to deal with the environmental and health situation in Map Ta Phut. He claimed that the situation in the area has not improved and that when community leaders inquired into the voluntary environmental indicators established by government and industry to measure improvements, they were met with stone-walling. To bolster his claim, he told us that there were four incidences in 2008 of chemical leakage in the area, which resulted in 400 people being hospitalized. Now that the Court has ruled, the activist said his group would soon decide whether to file civil and criminal lawsuits against members of the National Environment Board for negligence in failing to designate Map Ta Phut a pollution control zone. He told us activists plan to monitor the implementation of pollution measures and push for increased local community participation in their development and implementation.

16. (SBU) The Thailand Country Program Director of the Solidarity Center (the international arm of the AFL-CIO), told the Embassy that the Ford/Mazda Workers Union of Thailand joined with Map Ta Phut villagers to conduct advocacy activities in support of the court case and the broader campaign against polluting companies in Map Ta Phut. He noted that the Asia Labor Network on International Financial Institutions (ALNI) prepared a report on pollution problems inside the plants in Map Ta Phut, but that this activity was separate from the campaign on the court case. (NOTE: In the wake of the 1997 financial crisis in Southeast Asia, a group of trade unions, academics, labor NGOs, and other civil society organizations formed the Asia Labor Network on International Financial Institutions (ALNI) with support from the Solidarity Center. The USG, through USAID, provides funds for Solidarity Center's support of ALNI. End Note)

1U. S. and Thai Business Reaction and Potential Impact

17. (SBU) The Thai businesses active in Map Ta Phut, which control about 90 percent of production there, reacted strongly to the Court decision. Supachai Watanangura, chairman of the Federation of Thai Industries' (FTI) Petrochemical Industry Club, told the media after the ruling that the Court's decision would negatively affect new

investment in Thailand. Prime Minister Abhisit reportedly dismissed this claim March 17, quoted in the press as saying "we have announced many places as pollution control zones and there is nothing wrong with investment. Business can run as usual." Nonetheless, according to a March 9 statement by another FTI official, the ruling will affect 138 factories in six industrial estates within the Map Ta Phut area, which have invested between 400 and 500 billion baht and which, along with related industries, employ 100,000 individuals. Deputy Energy Permanent Secretary Norkhun Sitthipong, in his capacity as Chairman of the Board of PTT (Thailand's now privatized national energy conglomerate) stated March 3 that while PTT will honor the ruling, PTT's subsidiaries would need to submit their investment plans to PTT's Board for reconsideration. Drawing attention to the fear of decreased investments, PTT announced it may have to review a planned natural gas separation plant and related petrochemical project worth a combined 100 billion baht (2.8 billion USD) to take into account the issuance of new environmental rules.

18. (SBU) U.S. company Dow Chemical is concerned the ruling could derail its 1.5 billion USD expansion project. Company representatives explained that, unlike its Thai competitors, Dow's existing environmental standards exceed both voluntary and proposed mandatory standards. Dow's main concern is that the RTG will freeze all environmental impact assessments (EIA) until new environmental standards for Map Ta Phut are in place. With two pending EIAs due before Dow can move forward with its investment for a jetty project and another for a hydrogen facility, Dow fears that a delay could last months, or even years. According to PCD's legal department March 19, the new standards could take anywhere from three months to one year to be developed. (NOTE: Dow claims the study regarding cancer rates in Rayong, compared with other provinces, is faulty as the research did not take into account the large migrant population in Rayong, which when added to the population brings the cancer rate to normal levels. In addition, company officials explained that workers at the Dow facility have regular health screenings and their health rates are all normal. End Note)

Thai Judiciary Empowered?

19. (SBU) The NEB's decision not to appeal the Administrative Court's designation of Map Ta Phut as a pollution control zone may reflect an empowered Thai court system that is willing to offer better opportunities for citizen redress. A member of a human rights-focused civil society group told us on March 6 that the Administrative Court was one of the few courts to respond positively

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to pressure or campaigns from civil society groups. He noted that the Court of Justice and the Office of Attorney General (OAG) rarely, if ever, acknowledged civil society campaigns. He told us that, in contrast, only one Administrative Court ruling against civil society came to mind - the 2007 rejection of a civil society petition for revocation of the privatization of the Petroleum Authority of Thailand (PTT). Even in that case, however, civil society groups planned to resubmit the petition, and remained optimistic the court would rule in their favor.

110. (SBU) A prominent practitioner of environmental law who argued multiple cases in the Administrative Court told us on March 13 that the trend of civil society groups finding a sympathetic ear with the Administrative Court started when the Consumer Protection Board lacked resources to wage effective campaigns on behalf of civil society. He explained that people instead raised complaints in the form of petitions to the Administrative Courts and took note as the Court ruled in favor of the civil complaints. He also told us that the Court's favorable rulings on the environment were a direct result of a training program, sponsored by Japan and the United States, to educate judges about environmental law. He explained that in cases like Map Ta Phut it became a natural "duty" of the Administrative Court to intervene due to the horrendous pollution levels. "The Court is protected by the Constitution," he said, and noted that the Constitution guarantees the Administrative Court's right to be responsive to civil society participation. He considered the Map Ta Phut ruling, as well as a separate ruling in Lampang, to be unprecedented because citizens affected by pollution

levels now have the right to demand compensation from the government. However, our contact pointed out that the Administrative Court's ability for continued citizen redress in terms of environmental cases like Map Ta Phut is limited. He explained that future battles between environmentalists and investors would have to be fought in the Constitutional Court since each side cited provisions in the constitution to bolster their cases. The Constitutional Court, he noted, is the only Court empowered to settle discrepancies regarding interpretations of the constitution and would be the final battleground to address the conflicts between the two groups.